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VOTE "YES" ON PROPOSITIONS 6 AND 7 ON NOVEMBER BALLOT

THE State Bar's program for the adoption at the November general election of propositions 6 and 7 should receive the active support of the entire Bar.

Proposition No. 6 gives the Legislature power in its discretion to provide for judicial review by the Superior Court of orders of administrative bodies. Proposition No. 7 was originally Assembly Constitutional Amendment No. 32, and provides for an improved structure of the Appellate Court and improved procedure for the Court.

The principle of such review, under No. 6, whenever and to the extent our Legislature finds it desirable, should appeal to all citizens. No court or commission exists so wise or honest that it may not on occasion be wrong. If our trial courts are wrong, we have the privilege of appealing to a higher court for correction of the error. Why should we not have the same privilege when we feel that the decision of a commission is wrong?

The entire Bar of the State realizes that justice must not only be even-handed, *but must be reasonably expeditious.* The two and three years' time which often elapses before a case is finally decided is too much.

For over five years the Bar of the State, through widely representative committees, has been studying the problem and carefully considering the remedy. Proposition No. 7 is the result. It has been endorsed by the association of our appellate court justices and by the Judicial Council.

THE THIRD TERM TRADITION FROM WASHINGTON TO ROOSEVELT II

By Whitney Harris, of the Los Angeles Bar

ON the 17th day of September, 1796, the first President of the United States announced in his historic Farewell Address to the American people his desire to retire from the presidency. Whether he was motivated solely by a desire to free himself from the criticism to which he had been subjected and the exhaustion which he had suffered[1] or by thought that his retirement was in "accord with the Republican spirit of our Constitution and the ideas of liberty and safety entertained by our people"[2] is not of great importance. The fact of historical significance is that the first president of our land, a man who could in all probability have remained at its head until his death, did at the end of his second term voluntarily relinquish all claim or ambition to further tenure in that high office. From that day until the equally historic 16th day of July, 1940, no president of the United States, having held office for eight years, has consented to accept a third consecutive term.

The history of presidential tenures in the intervening years is one of the most interesting chapters of American constitutional history. Following John Adams, who served only one term, there came into the presidency the foremost champion of two-term limitation, Thomas Jefferson. When petitioned by the Legislatures of Vermont and New Jersey to consent to a third term,[3] he replied in language which remains the most idealistic expression of the philosophy of voluntary retirement.

He said: "That I should lay down my charge at a proper period, is as much a duty as to have borne it faithfully. If some termination of the services of the chief magistrate be not fixed by the Constitution, or supplied by practice, his office, nominally for years will, in fact, become one for life, and history shows how easily that degenerates into an inheritance. Believing that a representative government, responsible at short periods of election, is that which produces the greatest sum of happiness to mankind, I feel it a duty to do no act which shall essentially impair that principle, and I should unwillingly be the person who, disregarding the sound precedent set by an illustrious predecessor, should furnish the first example of prolongation beyond the second term of office."[4] When these words were spoken, a precedent had become a principle.

Madison and Monroe, who were of the same political party as Jefferson, followed his example by retiring from the presidency after their second terms of office. Their adherence to the principle which he had sought so zealously to establish caused Jefferson to write: "The example of four Presidents voluntarily retiring at the end of their eighth year and the progress of public opinion that this principle is salutary have given it in practice the form of precedent and usage, insomuch that, should a president consent to be a candidate for a third election, I trust he would be rejected on this demonstration of

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[1]The eminent contemporary historian, Charles A. Beard, says: "Another election was out of the question, not because he regarded the idea of a third term as improper or open to serious objections, he was simply through with the honors and turmoil of politics." *The Rise of American Civilization,* 1930, The Macmillan Co., p. 371.

[2]Extract from Washington's Undelivered Farewell Address written in 1792.

[3]Altogether eight out of seventeen state legislatures passed resolutions asking Jefferson to serve for four more years. It is generally agreed that, like Washington, he could have had a third term had he aspired to it.

[4]*The Writings of Thomas Jefferson,* 1905, Thomas Jefferson Memorial Association, Vol. XVI, pp. 293-4.

ambitious views."[5] Thus, in Jefferson's mind at least, by 1825 the principle had become a tradition.

The election of Andrew Jackson, in 1829 gave the country its first President from west of the Alleghenies and, next to Jefferson, its most voluble advocate of limitation of presidential terms. In six of his eight annual messages to Congress Jackson asked that an amendment to the Constitution be voted restricting the president to a single term of four or six years. Of course, in the absence of such constitutional restriction, Jackson did not feel that he countered principle in accepting a second term himself,[6] but even Jackson, whose political control was so firm that Chief Justice Story once remarked: "Though we live under the form of a republic we are in fact under the absolute rule of a single man," yielded to tradition, and voluntarily retired from the presidency at the end of his second term. The tradition had, in the words of Congressman John Quincy Adams, then become "a tacit constitutional law."

From Jackson to Grant, no president lived through a second term of office. Grant, although less popular than Jackson, was likewise less inclined to respect tradition. As the end of his second term neared, therefore, a resolution was introduced in the House of Representatives calculated to discourage any secret aspirations he might have had to a third consecutive term. The resolution stated: "That in the opinion of this House the precedent established by Washington and other presidents of the United States, in retiring from presidential office after their second term, has become by universal concurrence a part of our republican system of government, and that any departure from this time-honored custom would be unwise, unpatriotic, and fraught with peril to our free institutions." The resolution carried by a vote of 233 to 18, and ended, before its inception, any move for a third consecutive term for Grant.

Four years later, however, flushed with the receptions he had received from royalty on his famous round the world tour, and urged on by an ambitious wife, Grant permitted his name to be placed in nomination at the Republican national convention. It was agreed by his supporters that, in thus consenting to run for a third term, Grant was not violating tradition because the precedent extended only to a third *consecutive* term in office. But the people were never given an opportunity to vote upon the principle or the man, for Grant failed to gain the nomination.

Grover Cleveland has the unique distinction of having received a majority vote from the American people at three consecutive elections. He failed to receive a majority of the electoral vote in the second campaign, however, and hence was never a third-term candidate. At least until his hands had grown

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[5] *Ibid.*, Vol. I, p. 120.

[6] Jackson thus reverted to the plan presented by Randolph of Virginia in the Constitutional Convention. It is interesting to note that, although he strongly advocated a constitutional limitation of presidential tenure to one term, he had not the strength to support that principle by voluntary retirement at the end of his own first term. Jackson's submission to the power of political pressure and prestige affords the finest example for those who believe that tradition alone is insufficient and that absolute constitutional limitation should be placed upon presidential tenure.

fond of holding the royal reins of government,[7] Cleveland was a bitter opponent of the practice of presidential re-eligibility. On one occasion he said: "When we consider the patronage of this great office, the allurements of power, the temptation to retain public office once gained, and more than all, the availability a party finds in an incumbent whom a horde of office-holders . . . stand ready to aid with money and trained political assistance, we recognize in the eligibility of the President for re-election the most serious danger to that calm, deliberate, and intelligent action which must characterize a government by the people."

Theodore Roosevelt almost duplicated Grant's challenge to the third term tradition. Early in his second term he had publicly announced that he considered the completion of McKinley's term to be his own first term, and that "under no circumstances" would he "be a candidate for or accept another nomination." True to his word, Theodore Roosevelt voluntarily retired at the end of his second term, and went lion-hunting in Africa and royalty-baiting in Europe while Taft looked after the presidency.

But Roosevelt's hat was in the ring four years later, and America's most popular president thereby challenged one of America's most popular traditions.[8] As in the case of Grant, however, the aspiring third-termer failed to gain the nomination of his own party, and in the three-cornered run-off, Wilson was elevated to the presidency.[9]

It is not to be wondered that, after his experience with re-elections, Taft became a firm single-term advocate. From the non-elective and reflective office of Chief Justice of the Supreme Court, Taft wrote in 1916: "I am strongly inclined to the view that it would have been a wiser provision, as it was at one time voted in the convention, to make the term of the president six or seven years, and render him ineligible thereafter. Such a change would give to the executive greater courage and independence in the discharge of his duties. The absorbing and diverting interest in the re-election of the incumbent, taken by those federal civil servants who regard their own tenure as dependent upon his, would disappear and the efficiency of administration in the last eighteen months of a term would be maintained."

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[7]It has been said that, in spite of his public denouncements of presidential third terms, Cleveland would not have been an unwilling candidate for a third term for himself.

[8]Of course, it should be noted that this challenge was an indirect one. Roosevelt had really had only one term of his own, and, as in the case of Grant, four years had intervened during which another man was in the White House and another president was gaining political power through patronage control.

[9]The examples of Grant and of Roosevelt in attempting and failing to capture their party's nomination after an intervening term shows how important the feature of consecutiveness is to the tradition in so far as it is meant to achieve a reasonable rotation in office and prevent the possible emergence of presidential absolutism. While a man is in office, as Cleveland warned, his power of patronage is so great that the convention, composed as it always is of a substantial number of office-holders, must inevitably yield to his demand for renomination. Let that man step out of office for four years and that tremendous power of political domination is lost for him—his renomination and re-election then could only be possible if, in the words of Washington, he were "deemed *universally* most capable of serving the public." (Italics added.)

Whether these observations were the result of the application of an impartial legal mind to a practical political problem or merely the expression of one disgruntled by personal defeat under the system thus criticized, is not of great importance.

The significant deductions to be drawn from Taft's expressed preference for the old Virginia plan are two-fold: (1) That, in his opinion, the long trial of the traditional scheme had not proved superior to the single term plan, and (2) the tradition against a third term cannot resist twentieth-century presidential patronage and publicity, and only a constitutional amendment can protect the people from the possibility of unlimited presidential tenures.

Calvin Coolidge was the tenth two-term president; he was not of mind to be the first to break the tradition against running for a third consecutive term. Yet, in spite of his declaration on non-candidacy, the Senate confirmed the tradition in 1928, by resolution in language following closely that of the House resolution of 1875. Among those who voted for tradition over expediency were Senators Barkley, Wagner, Harrison and Pittman. Today, these men among others stand for expediency over tradition. In November we shall know how American stands.

DIGEST OF RECENT DECISIONS

By Sidney H. Wall, of the Los Angeles Bar

DECEDENT'S ESTATE: Claim against decedent's estate based on judgment more than five years old is not premature and therefore unenforceable because court order allowing enforcement of claim was not made until after claim was presented. *Pacific Gas & Electric Co. v. Elks Duck Club,* 101 C. A. D. 919.

DEEDS OF TRUST: Amendment made in 1935 to C. C. P. §580(b) extending operation of denial of right to deficiency judgment on purchase money trust deeds without limitation as to time had no application to deed of trust executed prior to amendment and when §580(b) was effective only to 1935. *Stockton Savings & Loan Bank v. Massanet,* 102 C. A. D. 276.

EASEMENTS: Easement for use of stairway of a building gives no interest in the soil but continues until building is destroyed without the fault of the owner of the servient tenement. *Rothchild v. Wolf,* 102 C. A. D. 357.

LABOR LAW: Collective bargaining agreements are not contracts "pertaining to labor" which are excepted from the arbitration statute by C. C. P. §1280. *Levy v. Superior Court,* 100 C. D. 94.

MUNICIPAL CORPORATIONS—FRANCHISES: A franchise granted to conduct a business on tidelands and privately owned lands of the grantee which exacts as payment two per cent of the gross income from business conducted on the premises is void as to the business conducted on the privately owned land. 102 C. A. D. 201.

PARTNERSHIP: Incoming partner is personally liable for rent accruing after his entrance into partnership under lease executed by partnership prior to his entrance. *Ellingson v. Walsh, O'Connor & Barneson,* 100 C. D. 81.

PUBLIC UTILITIES: Where attempted transfer of oil pipe line easement from public utility to non-public utility corporation was defective because without consent of railroad commission, the easement reverted to grantors, whether originally gained by grant or eminent domain. *Slater v. Shell Oil Co.,* 101 C. A. D. 903.

UNFAIR COMPETITION: Allegation that defendant was using trade name similar to plaintiff's for purpose of deceiving public stated cause of action for injunction although businesses were not directly competitive. *Academy of Motion Picture Arts and Science v. Benson,* 100 C. D. 90.

WATERS: Surface waters constituting runoff from mountains became stream waters when they gathered into a creek (which was a watercourse although its flow was intermittent) and when these stream waters left creek in time of flood, they became flood waters from which a property owner was entitled to protect his property. *Mogle v. Moore,* 100 C. D. 141.

BRAIN TEASER

A boy in need of money sent his father the following message:

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  $
 SEND
+MORE
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$MONEY
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How much money did he ask for? Ascribe a digit to each letter. Obviously M equals 1, where do you go from there?

WHAT'S NEW AT THE LAW LIBRARY

By Thomas S. Dabagh, Librarian

SERVICE INFORMATION. Through the courtesy of the *Los Angeles Daily Journal* there is now available a free poster on which the services of the Law Library are specified, for the convenience of patrons. The poster is designed to be hung in the practitioner's library, and gives telephone numbers, the hours the Law Library is open, and suggestions for getting the most service from the Library. Copies may be had at the Reference Desk.

DELIVERY SERVICE. Steady use is being made of the delivery service, by which books may be borrowed by telephone for a nominal fee from the Law Library, by authorized borrowers in the Los Angeles business district. The Reference and Loan Department reports 52 calls for service in September, as compared with 33 calls during March, the first month the service was in effect.

FINES FOR OVERDUE BOOKS. A few borrowers appear to be experiencing difficulty in returning borrowed books on time, and are subjecting themselves to substantial fines as a consequence. Since the Law Library is anxious to avoid the levying of fines—the system was adopted as a measure to assure prompt return of books for the benefit of all patrons, and not for revenue—it is suggested that a notebook be kept in each office, in which loans may be registered as the books are brought in.

New Books

ADMINISTRATIVE LAW. Hart's Introduction to Administrative Law is a new type text-case book, and although not exhaustive, it gives sufficient information to serve as a basis for further search on many points.

Mohundro's Notes on Pleading, Practice and Procedure Before Federal Regulatory Commissions is addressed principally to the beginner. It is intended to present an orderly picture of practice before regulatory agencies.

ALIENS. The personal rights of aliens as developed in the United States, and under customary international law, is the subject of Gibson's Aliens and the Law.

CONSTITUTIONAL LAW. A second edition of Matthew's American Constitutional System presents a comprehensive review of current constitutional law, including governmental organization and powers.

The Judicial Power of the United States, by Harris, is "an attempt to depict the phantasmagoria produced by the blending of different and; at times, contradictory elements" of the construction by courts of their own powers.

FOREIGN TRADE. Larkin's Trade Agreements discusses the constitutionality of such agreements, and compares administrative tariff rate-making under the cost-equalization formula with the trade agreement method.

JURISPRUDENCE. Bodenheimer points out in the preface to his new book, Jurisprudence, that the subject is again important because the modern attack against reason is at the same time an attack against the law, which is primarily a rational institution. The book emphasizes issues which relate to the political and social struggles going on in the world today.

LEGISLATURES. A study of the functional and legal aspects of legislative investigations is offered by McGeary's Developments of Congressional Investigative Power.

TAXES. Estate Planning to Minimize Taxes, by Garwood, is designed to explain the fundamentals of income, estate and gift taxes, and their application to insurance and trust problems.

WILLS. Harding's Practical Problems in the Preparation of Wills, second edition, is a brief review of the New York law on the subject.

MORATORIUM PROVISIONS IN NEW FEDERAL STATUTES RELATING TO MILITARY SERVICE

*By A. M. Cross, of the Los Angeles Bar

THE "National Guard Act," effective August 27th, 1940, and the "Selective Training and Service Act of 1940," effective September 16th, 1940, both embody certain provisions of the Soldiers and Sailors Civil Relief Act of 1918, which latter statute was enacted to protect persons in military service against loss of civil rights while in the service.

The provisions of these statutes are too voluminous to be here set forth in detail. First, a statement will be made as to where these new statutes or résumés thereof may be found in advance of their publication in the regular printed volumes of statutes. Then will follow a brief statement of the ground covered by these moratorium provisions, to challenge the attention of persons interested, to the lines along which care must be exercised, in order to avoid mistakes which may invalidate legal proceedings, and various other proceedings taken against persons in the military service, who are entitled to the protection of the provisions of the Soldiers and Sailors Civil Relief Act of 1918, which are incorporated into the two recent Acts of Congress above mentioned.

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*Chief Counsel, National Title Company.

WHERE TO FIND THEM

The pertinent provisions of the Soldiers and Sailors Civil Relief Act of 1918 are printed in the statute sections of the *"United States Law Week,"* issued August 27, 1940 (Vol. 9, No. 9). The entire Soldiers and Sailors Civil Relief Act of 1918 may be found in 40 U. S. Statutes 440.

An excellent résumé of the pertinent provisions of these statutes, prepared by Mr. Walter S. Home of the Los Angeles Bar, and the California Land Title Association, entitled "Analysis of Moratorium Actions Affecting Guards and Reserves," was published in the issue of *The Los Angeles Daily Journal* of September 24, 1940. The issue of *The Los Angeles Daily Journal* of September 27th, 1940, announces that the *Journal* has prepared a full reprint of data published in the *Journal* upon this subject in the form of a four-page tabloid, which may be secured from that newspaper for five cents a copy. In the issue of the *Daily Journal* of October 3rd, 1940, appears an opinion of the County Counsel reviewing the pertinent provisions of these Acts.

CHALLENGES ATTENTION

What is said below cannot be considered as a full statement of the requirements of these statutes, or even as a résumé of their contents, but is simply a statement to challenge attention to the importance and necessity of giving heed to the requirements of these statutes.

The statutory provisions may be divided into three groups as affecting

1. Court Actions
2. Agreements to Convey
3. Foreclosures of Trust Deeds and Mortgages Under Power of Sale.

As to Court Actions, it is provided that default judgments shall not be entered against a defendant unless the plaintiff shall have filed an affidavit setting forth the facts showing that the defendant is not in the military service, or that the defendant *is* in the military service, or that the plaintiff is not able to determine whether or not the defendant is in such service. Unless the affidavit shows that the defendant is not in the service, no judgment shall be entered except upon an order of court, following certain prescribed procedure.

The provisions of the statute should be consulted and carefully followed in the matter of such default judgments. The statute contains a provision that if a judgment is rendered against a defendant while he is in the service, or within 30 days thereafter, and he has a meritorious defense, he may make application not later than 90 days after termination of his service to open the judgment and make his defense.

AGREEMENTS TO CONVEY

As to Agreements to Convey, the vendor may not rescind or terminate the contract, or resume possession of the property for non-payment of any installment falling due during any term of military service of the vendees, except by action in a court of competent jurisdiction. Here again the statute should be consulted and carefully followed as to the requirements of such an action in a court of competent jurisdiction.

FORECLOSURES

As to Foreclosures of Trust Deeds and Mortgages under Power of Sale, the statute provides that sales made under deeds of trust or under mortgages with power of sale are invalid if made during the period the owner is in the military service, or if made within 3 months after his termination of service. If it is contemplated to make the sale under a mortgage or deed of trust by court action, instead of under the power of sale, the statute should be consulted and carefully followed with reference to the procedure in such court action.

The term "period of military service" is defined in the Selective Training

and Service Act of 1940 as including a period of 60 days after the date of termination of training and service or active duty. The National Guard Act defines this term as ending with the date on which the person ordered into active military service is relieved from such service, but extends the benefits of the Soldiers and Sailors Civil Relief Act of 1918 for the period that the person is in the service and for 60 days thereafter.

Note that in determining period of military service, 60 days probably must be added after the actual date of termination of training and service or active duty, in computing the time within which a default judgment is rendered against a defendant while he is in the service, or within 30 days thereafter, and in determining the period of 90 days after the termination of his service in which the defendant may move to set aside a default judgment; also in determining the invalidity of a trust deed or mortgage foreclosure sale under power of sale if made during the period the owner is in the military service or if made within 3 months after his termination of service.

OTHER PROVISIONS

There are numerous other provisions of the Soldiers and Sailors Civil Relief Act of 1918, including those relating to stays of attachments and executions, tolling of the statute of limitations, evictions, rights of guarantors of persons in the service, penalties, etc., as to these matters, the full text of this statute should be examined.

Again we caution the reader that this article is simply a sign-board pointing to the principal topics covered by these Acts and should not be relied upon as being in any respect a full statement of the subjects or of the procedure or requirements contained in these statutes.

CLIENTS NEED THEIR LAWYERS BUT DON'T USE THEM; SOMETHING PROPERLY MAY BE DONE ABOUT IT

By Ruel L. Olsen, of the Los Angeles Bar

LEGAL services needed by the layman but which the layman fails to request his attorney to perform, place a responsibility upon members of the legal profession to see that the situation is changed by proper methods safeguarding the relation of client and attorney.

It is common knowledge that six destroyers costing almost $50,000,000 will be built by a local corporation, that a naval repair ship which costs over $14,000,000 will be built by another local corporation, that a third local corporation is already building four ships for the United States Maritime Commission, that furniture manufacturers are now enjoying the largest volume of business since 1936 due to the rapid growth of population in this area and the widespread expansion in consumers' incomes, that 25,000 additional workers in Southern California aircraft plants have been added since the first of 1940 making a grand total of 55,000 persons so employed in the major Southern California aircraft plants, that definite contracts awarded to date have raised the backlog of Southern California aviation companies to almost $1,000,000,000 (which compares with a total of only $130,000,000 a year ago), that many of these aviation companies are branching out from their home offices in Southern California to other states, and that construction activities in Southern California during September was at the highest level since March, 1929, as measured by the value of permits issued, excluding the large military and naval construction programs in progress throughout the area. Surely there is a lot of legal work which desperately needs doing.

However, this is not only true during a period of expansion, but lawyers also may rest assured that in periods of economic change or depression there will be as great an available volume of work for them as during periods of prosperity. A leading factor among the forces causing this result is the current tax situation which gives every threat of becoming permanent.

The statement was recently made before a meeting of tax men in Los Angeles by the President of the National Tax Association, Dr. Charles W. Gerstenberg, that most specialists consider they have met the requirements of an expert if they keep up only with the Federal Income tax which represents 17 pieces of legislation passed in 27 years, a change coming about once in every year and a half. "But if we are looking for the official sources of all the light that can be thrown on taxation we must not linger too long with the legislative power houses, for the executive branches, to say nothing at the present of the Judiciary, have transformers that do things to the currents of information," he said.

It is too much to hope that the legal profession will retrieve a large portion of the income tax work now being done by tax men who are not lawyers. But estate and inheritance taxes are particularly within the field of members of the Bar. Lawyers must place the interests of their clients above considerations of personal convenience, and they will prevent the invasion of this field of taxation by non-lawyers. Every state, excepting Nevada, but including the District of Columbia, has some form of death duty, usually administered with the aid of administrative regulations and rules.

But what is the lawyer in general practice doing about inheritance and estate and gift taxes? The general practitioner in one way or another may be

serving clients who have very definite needs in these respects, but who have never taken the initiative—and who never will if left entirely to themselves—to ask their attorneys what should be done in the way of an estate plan to minimize these taxes.

The general practitioner hesitates to call these matters to the attention of his client for two reasons:

(1) He does not want the client to get the impression that he is particularly anxious to probate the will, thus running a chance of losing the present corporate or other work being done for the client, and

(2) The attorney knows that he does not have complete information at his finger tips concerning the fine points of inheritance, gift and estate taxes as they relate to the problem of formulating an estate plan to minimize taxes.

But the layman is entitled to the advice of his lawyer in whom he has for years placed entire confidence. The lawyer, on the other hand, must be honest with his client and tell him that these questions are not his specialty, but that he will call in an attorney specialist to confer with the attorney and with the client on these matters.

When dealing with clients in this manner the tax specialist is in a position to be of real assistance to the general practitioner in solving the problems of the client. Under such circumstances the tax specialist can be the motivating factor in getting the client to act promptly in connection with his estate plan. The natural result of this prompt action is that the attorney soon finds that he has another Will and Trust in his files, to say nothing of an estate analysis relating to the affairs of his client which shows in dollars and cents the amount of tax saved by the specific plan recommended. With such a saving specifically set forth in dollars and cents the attorney is in a position to charge his client a reasonable fee for setting up the estate plan.

The greatest value to the attorney of using this technique results from the fact that the attorney may rest assured that the Will which he has in his files is not likely to be changed because of deficiencies therein, when critically examined to discover if the tax situation has been adequately considered, but will really prove to be the document finally presented for probate. Every attorney who is doing even a single form of legal work for one client of means, should be increasingly conscious of the fact that the confidence placed in him by such a client is not fully merited unless such attorney becomes in fact the conduit through whom the estate, inheritance and gift tax situation of his client may be improved.

WANT TO EARN $3,000.00?

AMERICAN BAR ASSOCIATION has announced the subject selected for the Erskine M. Ross prize essay for 1941. The prize is $3000.00, and the subject is: "Prospective Development of International Law in the Western Hemisphere as Affected by the Monroe Doctrine."

The contest is open to all members of the A. B. A. in good standing, except previous winners, members of the Board of Governors, officers, and employees of the Association. Essays are limited to 6,000 words. Anyone wishing to enter the contest should communicate promptly with A. B. A., 1140 North Dearborn street, Chicago.

L. A. BAR ASSOCIATION ON HONOR LIST OF A. B. A. FOR OUTSTANDING SERVICE

EACH year the American Bar Association votes an "Award of Merit" to the State or local bar organization for outstanding service during the past year. At the Philadelphia convention, the Cleveland Bar Association received the award and half a dozen other associations were placed on the honor list, including our own State Bar and our own Los Angeles Bar Association. The State Bar received recognition for its "efforts to prevent juvenile crime by furnishing speakers to California schools on subjects designed to develop respect for law and to discourage criminal acts."

The L. A. Bar Association was commended "For developing a Lawyers' Reference Service System, designed to meet the needs of laymen in the lower income group, who need legal service at low cost and of others, both laymen and lawyers, who need the services of a lawyer experienced in some particular specialized field of law."

This development of the Association's activities during the current year received wide notice in local legal publications throughout the country.

A HARD "STRYKER"

"Public opinion in late years increasingly has been aroused to the belief that the leaders of our profession no longer can be found within the ranks of our combat troops, but rather in the calm and quiet academic halls. Is this conception justified? Is the law a racket? Are lawyers racketeers? Are judges and courts unnecessary, are legal principles a 'mass of hokum' and is 'the law as a whole a fraud?' I, for one, am tired out with the 'smart-aleck' literature of this country. I am bored to death with the debunking books which falsify history and biography. I set my heart, my mind and my two fists against all who are boring from within and who would, if they could, destroy all that has made America what it is,—the last best hope of earth." —Lloyd Paul Stryker, Morrison Foundation speaker before State Bar Convention at Coronado.

THE ALIEN REGISTRATION ACT OF 1940

By Harry Graham Balter, of the Los Angeles Bar

AFTER successfully weathering like assaults during many sessions of Congress, the friends of the foreign-born were finally compelled to retreat *post-haste* before the tidal-wave impetus of National Unity, and so the Alien Registration Act of 1940 has become the law of the land.

Known also as the Smith Bill, the Alien Registration Act is the most far-reaching piece of legislation, shaping the nation's attitude towards the foreign-born, since the comprehensive Immigration Act of 1924 entrenched the "national origin" quota system as a part of our established immigration policy.

There are three operative Titles to the Act:

TITLE I

"Disaffection" in the Armed Forces

Title I deals with the problem of "disaffection" in the armed forces of the country. The most important provisions are:

Section 1 (a). It shall be unlawful for any person, with intent to interfere with, impair, or influence the loyalty, morale, or discipline of the military or naval forces of the United States—

(1) to advise, counsel, urge, or in any manner cause insubordination, disloyalty, mutiny, or refusal of duty by any member of the military or naval forces of the United States; or

(2) to distribute any written or printed matter which advises, counsels, or urges insubordination, disloyalty, mutiny, or refusal of duty by any member of the military or naval forces of the United States.

. . . Sec. 2 (a) It shall be unlawful for any person—

(1) to knowingly or willfully advocate, abet, advise, or teach the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence, or by the assassination of any officer of any such government;

(2) with the intent to cause the overthrow or destruction of any government in the United States, to print, publish, edit, issue, circulate, sell, distribute, or publicly display any written or printed matter advocating, advising or teaching the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence;

(3) to organize or help to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any government in the United States by force or violence; or to be or become a member of, or affiliate with, any such society, group, or assembly of persons, knowing the purposes thereof.

The penalties are severe:

1. A fine of not more than $10,000 or imprisonment for not more than ten years, or both. (Section 5(a)); and

2. No person convicted of violating any of the provisions of Title I "shall during the five years next following his conviction be eligible for employment by the United States, or by any Department, or agency thereof (including any corporation, the stock of which is wholly owned by the United States)." (Section 5(b)).

The provisions of this Title apply to citizens as well as to aliens. There is, however, this important difference. An alien, if convicted of violating any of the offenses named in Title I, is not only subject to the penalties provided therein, but may be deported forthwith. (Section 19(b)4—specified as Section 20(b)4 in present draft of Act.)

Critics of laws of this type have feared their effect on our civil liberties and the destructive use to which they may be put in the hands of over-zealous inquisitors bent on disrupting trade-union activities and endangering the traditional right to criticize pre-war and war proclivities and programs. (*a la* A. Mitchell Palmer.) The future alone will demonstrate whether these fears were justified.

TITLE II

"Hardship Cases"

All students of the problem have agreed that the strict enforcement of the deportation phases of our immigration laws produces at times extreme hardships, particularly where families are broken up, where the means of support for the remnants of families is taken away by deporting the alien breadwinner, and in numerous other situations with which the immigration expert is familiar.

In the face of sporadic criticism, Secretary of Labor Frances Perkins nevertheless adopted a humane attitude in this class of cases called "hardship cases". There has been a working understanding with the Immigration and Naturalization Committees of both the House and the Senate that immediate deportation would not be effected in this type of case. Often, Congress would pass a specific law setting aside an order of deportation, which by strict law the Department of Labor had been compelled to issue.

Little notice has been made of the fact that Title II of the Alien Registration Act, to all intents and purposes, now legalizes the procedure which the Department of Labor had followed in this somewhat irregular fashion.

The most important provisions of Title II follow:

Section 20(c): "In the case of any alien (other than one to whom Subdivision (d) is applicable) who is deportable under any law of the United States and who has proved good moral character for the preceding five years, the Attorney General may

1. Permit such alien to depart the United States to any country of his choice, at his own expense, in lieu of deportation, or

2. Suspend deportation of such alien if not racially inadmissible or ineligible to naturalization in the United States if he finds that such deportation would result in serious economic detriment to a citizen or legally resident alien who is the spouse, parent, or minor child of such deportable alien. If the deportation of any alien is suspended under the provisions of this subsection for more than six months, all of the facts and pertinent provisions of law in the case shall be reported to the Congress within ten days after the beginning of its next regular session, with the reasons for such suspension. . . . If during that session the two Houses pass a concurrent resolution stating in substance that the Congress does not favor the suspension of such deportation, the Attorney General shall thereupon deport such alien in the manner provided by law. If during that session the two Houses do not pass such a resolution, the Attorney General shall cancel deportation proceedings upon the termination of such session, except that such proceedings shall not be cancelled in the case of any alien who was not legally ad-

mitted for permanent residence at the time of his last entry into the United States, unless such alien pays to the Commissioner of Immigration and Naturalization a fee of $18. . . . Upon the cancellation of such proceedings in any case in which such fee has been paid, the Commissioner shall record the alien's admission for permanent residence as of the date of his last entry into the United States, and the Secretary of State shall, if the alien was a quota immigrant at the time of entry and was not charged to the appropriate quota, reduce by one the immigration quota of the country of the alien's nationality as defined in section 12 of the Act of May 26, 1924, for the fiscal year then current or next following."

TITLE III

Registration and Fingerprinting

The motives which impelled Congress to require that all resident aliens be registered and fingerprinted may be ranged all the way from downright xenophobia to a sincere desire to appraise the size of the alien problem, as a preliminary step to the enactment of helpful legislation. The truth is probably somewhere in between the two extremes, and more specifically:

1. To find out how many aliens we actually do have in this country. The estimate of the Department of Labor is 3,600,000; the warnings of known alien-baiters like Representative Howard Smith of Virginia, the author of the Bill, and Senator Robert Reynolds of North Carolina, is that we have 20,000,000 aliens in this country.

2. How many aliens are here illegally?

3. How many of those who are here illegally are only "illegal" in a mild, inoffensive and technical way, as for example, those who have lived here for thirty or forty years and have always thought of themselves as citizens, but for some technical reason have been unable to complete the process? and

4. How many aliens who are illegally here are actually or potentially dangerous to our national well-being? The effect of an unassimilated mass of aliens on our National Unity was no doubt an important motive for the registration and fingerprinting features of the Act.

The important provisions of Title III follow:

1. No visa shall be issued by an American Consul in a foreign country until the applicant has been registered and fingerprinted. (Section 30.)

2. Every alien resident in the United States of the age of 14 years or older who was not registered and fingerprinted before he came to this country, and remains in the United States for thirty days or longer, must apply for registration and be fingerprinted. (Section 31(a)).

3. Alien minors under the age of 14 years are to be registered by their parents or legal guardian. (Section 31(b)).

4. The period of registration shall be from August 27, 1940, to December 26, 1940. (Section 32(a)).

5. The Commissioner of Immigration and Naturalization may prescribe special regulations for the registration and fingerprinting of

(a) Alien seamen;
(b) Holders of border-crossing identification cards;
(c) Aliens confined in institutions within the United States;
(d) Aliens under order of deportation;
(e) Aliens of any other class not lawfully admitted to the United States for permanent residence. (Section 32(c)).

6. The actual mechanics of registration and fingerprinting will be handled by the Postoffice Department. (Section 33(a)). However, the Immigration and Naturalization Service is responsible for the preparation of the questionnaires and will receive for permanent filing, check-up and further investigation all forms and fingerprinting records after they have passed through the Postoffice Department.

7. All registration and fingerprinting records shall be secret and confidential and shall be made available only to such persons or agencies as may be designated by the Commissioner of Immigration and Naturalization, with the approval of the Attorney General. (Section 34(b)).

8. Every alien required to be registered who is a resident of the United States, must notify the Commissioner of Immigration and Naturalization in writing within five days of any change of residence (Section 35) and any alien who fails to give written notice of his change of address, subjects himself to a fine not to exceed $500 or to imprisonment not to exceed thirty days, or both. (Section 36(b)). A wilfull refusal or failure to register subjects the alien, upon conviction, to a fine not to exceed $5,000 or to imprisonment not to exceed six months, or both. (Section 36(a)).

9. Any registrant who files an application containing statements known by him to be false, or who procures or attempts to procure registration of himself or other person through fraud shall, upon conviction, be fined not to exceed $1,000 or be imprisoned not to exceed six months, or both; and further, if convicted within five years after entry into the United States, the alien is subject to immediate deportation. (Section 36(c)).

The standard form for alien registration lists fifteen questions, namely:

Item 1. Name.
Item 2. Address.
Item 3. Birth date and birth place.
Item 4. Foreign citizenship.
Item 5. Sex, marital status and race.
Item 6. Height, weight and color of hair and eyes.
Item 7. Entry into the United States.
(It is not necessary to report as a last arrival any return to the United States from a visit of less than six months in Canada or Mexico.)
Item 8. Residence in the United States.
Item 9. Occupation, employer and industry.
Item 10. Activities.

The "Instructions for Specimen Form" has this requirement in connection with Item 10:

> "State your activities during the past five years, either in the United States or abroad, other than as shown by your statements regarding present or usual occupation, giving the approximate dates of such activities."

This Item, as well as Item 15 "Activities for Foreign Government" will probably become the items around which the greatest amount of acrimony will develop. The avowed purpose for requiring an answer to these questions is to determine whether or not the alien has been engaged in any activities, actually or potentially, subversive. At the same time labor and liberal groups in general are fearful that in the hands of unfriendly administrators, the information obtained from the answers to these questions may well be used as a means of harassing and intimidating aliens who are active in progressive circles. We understand that at the time when these questions were discussed, the titular heads of the AFL and the CIO were called in and asked whether they preferred that the questionnaires specifically exempt trade-unions from those organizations, activity in which must be disclosed. No such exemption was requested.

Item 11. Military and naval service:

Item 12. United States Citizenship; ("State whether you have or have not applied for first citizenship papers," etc.)

Item 13. Relatives;

Item 14. Arrest record;

Item 15. Activities for Foreign Government.

Here are some practical pointers that may prove helpful to the lawyer who may be called upon to advise in this regard:

1. If in doubt as to whether to register, advise registration. Many persons honestly do not know whether they are or are not citizens. To be safe, they should register. The fact of registering will in no way prejudice them in any subsequent naturalization proceeding.

2. Filipinos and Hawaiians, etc., must register.

3. Form AR-1 (green form) is available at all postoffices. The alien may take the form home, study the questions and fill in the answers. He then takes this green form to the central registration office in his community (in Los Angeles it is at San Pedro and East 22nd streets), and a clerk will then retype the answers on form AR-2 (white form). The alien will then sign and be fingerprinted. Later, from the Immigration and Naturalization Service at Washington, he will be forwarded an official receipt.

4. Registration is free. No individual or group may charge for this service.

Quere: May a lawyer make a fair charge for advising a client as to how to answer specific questions?

Probably yes, but this is a field where caution must be exercised.

STATEMENT OF THE OWNERSHIP, MANAGEMENT, CIRCULATION, ETC., REQUIRED BY THE ACTS OF CONGRESS OF AUGUST 24, 1912, AND MARCH 3, 1933

Of Bar Bulletin published monthly at Los Angeles, California. for October, 1940.
(Insert title of publication. State frequency of issue. Name of post office and State where publication is entered.)

State of California, County of Los Angeles—ss.

Before me, a Notary Public in and for the State and county aforesaid, personally appeared Chester Loomis, Jr., who having been duly sworn according to law, deposes and says that he is the (State whether editor, publisher, business manager, or owner. Insert title of publication.) Business Manager of the Bar Bulletin and that the following is, to the best of his knowledge and belief, a true statement of the ownership, management (and if a daily paper, the circulation), etc., of the aforesaid publication for the date shown in the above caption, required by the Act of August 24, 1912, as amended by the Act of March 3, 1933, embodied in section 537, Postal Laws and Regulations, printed on the reverse of this form, to wit:

1. That the names and addresses of the publisher, editor, managing editor, and business managers are:

Name of— Post office address—
Publisher: Los Angeles Bar Association, Los Angeles, California.
Editor: Ewell D. Moore, Los Angeles, California.
Managing Editor: None, None.
Business Manager: Chester Loomis, Jr., Los Angeles, California.

2. That the owner is: (If owned by a corporation, its name and address must be stated and also immediately thereunder the names and addresses of stockholders owning or holding one per cent or more of total amount of stock. If not owned by a corporation, the names and addresses of the individual owners must be given. If owned by a firm, company, or other unincorporated concern, its name and address, as well as those of each individual member, must be given.)

The Los Angeles Bar Association, an unincorporated association, composed of members of the Los Angeles City and County Bar. Address: 1124 Rowan Building, Los Angeles, California.

3. That the known bondholders, mortgagees, and other security holders owning or holding 1 per cent or more of total amount of bonds, mortgages, or other securities are: (If there are none, so state.)

None.

4. That the two paragraphs next above, giving the names of the owners, stockholders, and security holders, if any, contain not only the list of stockholders and security holders as they appear upon the books of the company but also, in cases where the stockolder or security holder appears upon the books of the company as trustee or in any other fiduciary relation, the name of the person or corporation for whom such trustee is acting, is given; also that the said two paragraphs contain statements embracing affiant's full knowledge and belief as to the circumstances and conditions under which stockholders and security holders who do not appear upon the books of the company as trustees, hold stock and securities in a capacity other than that of a bona fide owner; and that affiant has no reason to believe that any other person, association, or corporation has any interest direct or indirect in the said stock, bonds, or other securities than as so stated by him.

5. That the average number of copies of each issue of this publication sold or distributed, through the mails or otherwise, to paid subscribers during the twelve months preceding the date shown above is..... (This information is required from daily publications only.)

Chester Loomis, Jr.,
(Signature of business manager.)

Sworn to and subscribed before me this 25th day of September, 1940.

H. S. St. Clair,
Notary Public in and for the County of Los Angeles, State of California.
(My commission expires March 16, 1943.)

BULLETIN INDEX

TITLE INDEX TO ARTICLES

(References are to pages of Vol. 15)

INDEX TO SUBJECTS

(References are to pages of Vol. 15)

AUTHORS INDEX TO ARTICLES

(References are to pages of Vol. 15)

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